

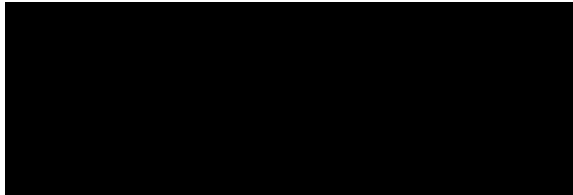
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

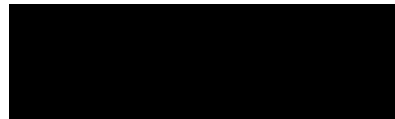


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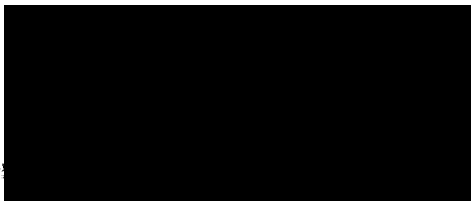
FILE: SRC 03 026 50863 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides aircraft maintenance. It seeks to employ the beneficiary as a supervisor of interior aviation repair. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proposed position is not a specialty occupation. On appeal, counsel submits additional evidence.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a supervisor of interior aviation repair. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail supervising the repair and maintenance of aircraft interiors; overseeing the repair of aircraft interiors including side walls, floor boards, galley seat tracks, windows, ceiling, and panels; supervising the removal, repair, and overhauling of air conditioning systems, portable water supply systems, sealing fuel tank systems, and insulation; and preparing reports regarding the work that was performed. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in aviation science or its equivalent from an accredited college or university in the United States.

The director determined that the proposed position is not a specialty occupation. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that it reveals that the proffered position's duties are performed by aircraft avionics equipment mechanics and service technicians, which are occupations that do not require a baccalaureate degree.

On appeal, counsel refers to the opinion letter from [REDACTED] Director Career Services, Embry-Riddle Aeronautical University, to substantiate his contention that the proposed position is a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, the AAO does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors that the AAO considers. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations.

The director correctly concluded that the proposed position falls under the aircraft and avionics equipment mechanics and service technician section in the *Handbook*. The section describes a mechanic as performing specialized preventive maintenance such as inspecting and replacing parts of engines, landing gear, instruments, pressurized sections, and accessories. The *Handbook* reveals that most mechanics learn their job by attending trade schools certified by the FAA, and that “[a]bout one-third of these schools award 2- and 4-year degrees in avionics, aviation technology, or aviation maintenance management.” Based on this information, the petitioner fails to establish that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

The letter from [REDACTED] is insufficient to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the position is so complex or unique that it can be performed only by an individual with a specific degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In the July 20, 2003 letter, [REDACTED] stated that a baccalaureate degree provides aviation maintenance managers with management training. In the January 29, 2004 letter, [REDACTED] opines that, because of the position’s complexity, it is now standard in the industry for a supervisor of interior aviation repair to hold a specific baccalaureate degree.

The relevancy of [REDACTED] opinion is apparent, however, no evidence in the record substantiates it. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the *Handbook* indicates that experienced aircraft mechanics, an occupation that does not require a baccalaureate degree, advance to other positions, including management:

As aircraft mechanics gain experience, they may advance to lead mechanic (or crew chief), inspector, lead inspector, or shop supervisor positions. Opportunities are best for those who have an aircraft inspector’s authorization. In the airlines, where promotion often is determined by examination, supervisors sometimes advance to executive positions. Those with broad experience in maintenance and overhaul might become inspectors with the FAA. With additional business and management training, some open their own aircraft maintenance facilities. Mechanics learn many different skills in their training that can be applied to other jobs, and some transfer to other skilled repairer occupations or electronics technician jobs.

There is no evidence in the record to satisfy the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner show that it normally requires a degree or its equivalent for the position.

No evidence satisfies the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires that the petitioner show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As discussed in this decision, the *Handbook* reveals that the beneficiary would occupy a mechanic position, which is not a specialty occupation.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on the ground that the proffered position is not a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.